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Attorneys for CITY OF SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUAN DIAZ, KEITH KEESLING,
CHRISTOPHER MURPHY, GARY
WEEKLEY, KAREN ALLEN and other
employees similarly situated.

Plaintiffs.

v.

CITY OF SAN JOSE.

Defendant.

Case Number: C07-06424 JW

**STIPULATION AND [PROPOSED]
ORDER RE: SETTLEMENT OF FLSA
CLAIM**

WHEREAS, this is a Fair Labor and Standards Act ("FLSA") case in which the Plaintiffs are asserting, based on several different theories, that Defendant City of San Jose has not paid Plaintiff firefighters overtime consistent with the FLSA for the last several years;

WHEREAS, the City denies these allegations:

WHEREAS, the parties agree that the further pursuit of this action would not be of benefit to either party:

WHEREAS, the parties represent that they have reached a settlement in this matter which has been approved by Plaintiffs and by the San Jose City Council in closed session

but is subject to approval of the San Jose City Council in regular session;

WHEREAS, through this stipulation, the parties seek an order from the Court approving the tentative settlement reached by the parties, so that the parties may finalize the settlement and file a stipulated judgment.

THEREFORE, the parties, through their respective counsel, stipulate as follows:

(1) The proposed settlement agreement reached by the parties in this matter is fair and reasonable and will consist in substantial part of the following: (a) Plaintiffs will recover from the Defendant City of San Jose back wages in an amount to be determined by recalculating the Plaintiffs' payroll back to the pay that includes September 21, 2005 through the time that settlement payment is made; (b) such recalculations and settlement payments shall be calculated consistent with the proposed settlement agreement, attached hereto as Exhibit A; (c) beginning the first pay period that commences after July 1, 2010, the City will calculate overtime pay pursuant to the attached proposed settlement agreement; and (d) the City will pay Plaintiffs' attorneys' fees and costs for both this matter as well as the related case of *Jeffrey Welch, Glen Bishop, Mitchell Witsinski, Robert Culbertson, and other employees similarly situated v. City of San Jose*, case number C08-02132 JF, in a total amount of one hundred five thousand dollars (\$105,000) for both cases.

(2) Upon approval by the San Jose City Council of this settlement at a regular session of the San Jose City Council, the parties shall submit for signature a stipulated judgment incorporating the terms of this Order as well as an executed settlement agreement.

(3) Any judgment amount or other consideration herein ordered shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any of the parties herein and that the plaintiffs waive all rights, if any be had, to further liquidated damages.

Dated: May 13, 2010

RICHARD DOYLE, City Attorney

By: _____ /S/
ROBERT FABELA
Sr. Deputy City Attorney

Attorney for Defendant CITY OF SAN JOSE

1 Dated: May 13, 2010

WYLIE, McBRIDE, PLATTEN & RENNER

2 By: _____ /S/
3 CAROL L. KOENIG

4 Attorneys for Plaintiffs JUAN DIAZ, KEITH
5 KEESLING, CHRISTOPHER MURPHY,
6 GARY WEEKLEY and KAREN ALLEN

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9 ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:

10 I attest that concurrence in the filing of this document by the signatories, Robert
11 Fabela and Carol Koenig, has been obtained, and that a record of the concurrence shall be
12 maintained at the Office of the City Attorney.

13 Date: May 13, 2010

By: /s/ Robert Fabela
ROBERT FABELA

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19 **ORDER**

20 It is so ordered. The May 24, 2010 Status Conference is vacated.

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22 Dated: May 18, 2010



JAMES WARE

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24 UNITED STATES DISTRICT JUDGE